IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR
&
THE HONOURABLE MR. JUSTICE K.M.JOSEPH

MONDAY, THE 18TH SEPTEMBER 2006 / 27TH BHADRA 1928

ST.Rev..No. 276 of 2004

TA.481/2003 of S.T.A.T.ADDL.BENCH,ERNAKULAM
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REVISION PETITIONER/ASSESSEE/APPELLANT

M/S. ANAND WIRE AND ALLIED INDUSTRIES PVT.LTD., ERNAKULAM, REPRESENTED BY ITS MANAGING DIRECTOR SRI. S.K.CHOPRA.

BY ADV. SMT.S.K.DEVI
SRI.M.RAJ MOHAN
SRI.SANTHOSH P.ABRAHAM
SMT.DEEPSUR D.JAYAN
SRI.K.P.PRADEEP (PAYYANNUR)

RESPONDENT/REVENUE/RESPONDENT

STATE OF KERALA, REPRESENTED BY ITS FINANCE SECRETARY, SECRETARIAT, THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER (SHRI GEORGEKUTTY MATHEW)

THIS SALES TAX REVISION HAVING BEEN FINALLY HEARD ON 18/09/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

C. N. RAMACHANDRAN NAIR &
K. M. JOSEPH, JJ.

ST.REV.CASE NO. 276 OF 2004

Dated this the 18th day of September, 2006

JUDGMENT

C. N. Ramachandran Nair, J.

Heard counsel for petitioner and Government Pleader. Question raised is with regard to the rate of tax on the items sold after closure of business by petitioner. Tribunal found that the items sold are old machinery and equipments and, therefore, appropriate rate of tax under the Schedule was rightly applied. However, the case of petitioner all through was that the items sold were scrap items, as the business was closed and machinery had become old, out-dated and scrap. At the time of hearing the case, counsel produced the sale bills and we have gone through the same. We find that the items were sold at substantially high value which is a reflection of the fact that the items were not sold as scrap. If an item of machinery is sold as scrap, then it will have only the metal value and normally scrap items are sold by weight, and not by number. All the invoices show that items

of machinery, such as, wire drawing machine, welding set, etc. are sold by number and the value shown in the invoices only prove that they have not ceased to be machinery and, therefore, could be re-used though probably after reconditioning or servicing. For example, one old Generator set is seen sold at a price of Rs.75,000/=. This obviously shows that contrary to the claim that the items were damaged and were scrap, the items were sold as such with reference to their use. Low value is obtained only because the machinery is old or may be wanting servicing or repair before being put to use again. Moreover, from the addresses of purchasers also, it is clear that they are industries and the machinery items purchased are obviously for use. We do not think there is any distinction between hand operated machine and electrically operated machine and so much so, the specific case for reduction of tax in respect of hand operated barbed wire machine does not stand. In such circumstances, the assessment of the items sold at the appropriate rate of tax under the Schedule upheld by the tribunal

is correct. We, therefore, dismiss the S.T. Rev. Case.

2. However, having regard to the fact that the business was closed and the amnesty was provided by the Government during 2004 for granting rebate of interest, we feel petitioner can be granted forty per cent reduction of interest, provided arrears of tax with sixty per cent of the interest payable under Section 23(3) of the KGST Act are paid within three weeks from the date of receipt of a copy of this Judgment.

C. N. RAMACHANDRAN NAIR, JUDGE

K. M. JOSEPH, JUDGE

kbk.